IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.9360 OF 2004

Mr.C.R.Dalvi for the Petitioner.

| Office Notes, Office Memoranda of Coram, appearances, Court's order or directions | Court's or Judge's orders |
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| | **CORAM: D.K.DESHMUKH, J.** |
| | **DATED:** 3RD AUGUST,2005 |

P.C.:

1. By the order impugned in the petition, abatement of the suit is set aside and the legal representatives of the deceased Defendant/tenant have permitted to be brought on record. The net result of the order would be that the legal representatives of the Defendant will get an opportunity to contest the suit.

2. The learned Counsel appearing for the Petitioner submits that once the suit is already filed, there is

no justification for the Petitioner to file the second suit. The result of this order is that the legal representatives of the Defendant are made to contest two litigations.

3. In my opinion, that cannot be justification for not allowing the application for setting aside the abatement of the suit and for bringing legal representatives of the dececased on record and if the Plaintiff is not justified in filing the second suit, obviously the Defendant can pray to the court payment of costs to compensate the Defendant. In my opinion, the order does not result in failure of justice. Hence, the Petition filed under Article 227 of the Constitution of India cannot be entertained. It is rejected.

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